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Remarks

Applicant carefully considered the Office Action mailed May 18, 2004. Claims 1-47 are pending in the present patent application. Of the pending claims, the Examiner rejected claims 1-4, 8-22, 26-36 and 40-47. In addition, the Examiner objected to claims 5-7, 23-25 and 37-39, but indicated that these claims contain subject matter that would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response to the Office Action, Applicant canceled claims 2-3, 19-21 and 34-35 and incorporated the subject matter therefrom into claims 1, 18 and 33, respectively, in order to overcome the outstanding rejections. In addition, Applicant amended claims 4-5, 22-23 and 36-37 to maintain proper claim dependency. Applicant also amended independent claims 8, 13, 17, 26, 31, 40, 44 and 47 in a manner similar to the amendments made for claims 1, 18 and 33. In addition, Applicant added new claims 48-78 to better define the patentable features of the present invention. No new matter has been added. Applicant requests further examination and reconsideration of the present patent application.

The Examiner objected to claims 17-18 and 47 for containing informalities. Applicant amended claims 17-18 and 47 to remove the informalities. In particular, Applicant changed "fake" to "flake" and "entering" to "receiving". These amendments are for clarification purposes and do not narrow the scope of the claims. Accordingly, Applicant requests that the Examiner reconsider and remove the objection to claims 17-18 and 47.

The Examiner rejected claims 1-2, 8-20, 26-34 and 40-47 under 35 USC §102(b) as being anticipated by Kettler et al. (US Patent Number 5,929,998). Applicant respectfully traverses the §102(b) rejection of the present patent application and submits that claims 1, 8-18, 26-33 and 40-47 are patentable over Kettler et al. (hereinafter Kettler).

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Independent claims 1, 8, 13, 17, 18, 26, 31, 33, 40, 44 and 47 of the present invention now recite the limitation of applying optical parameters associated with the pigments, dyes and platelet-shaped pigments in the color formula having the best match to a single particle scattering algorithm.

Kettler discloses an approach for matching a known reference color formulation to a color shade model. Kettler's approach does not disclose using single particle scattering algorithm. Since Kettler does not disclose applying optical parameters to a single particle scattering algorithm, Applicant submits that Kettler does not anticipate independent claims 1, 8, 13, 17, 18, 26, 31, 33, 40, 44 and 47. Claims 9-12, 14-16, 27-30, 32, 41-43, and 45-46 depend directly or indirectly from now presumably allowable claims 8, 13, 26, 31, 40 and 44, respectively, and are in allowable condition by dependency. Accordingly, Applicant requests that the Examiner reconsider and remove the §102(b) rejection of claims 1, 8-18, 26-33 and 40-47 under Kettler.

Applicant notes that the Examiner submitted that the combination of Kettler in view of Asaba et al. ("US Patent Number 6,249,751") discloses the limitation of applying optical parameters to a single particle scattering algorithm. In support of the combination of Kettler and Asaba, the Examiner submitted that it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use a single particle scattering algorithm like the one disclosed in Asaba in Kettler's method in order to save computer memory and to determine bi-directional color with less measurements.

Applicant respectfully traverses the rationale used by the Examiner to combine the teachings of Asaba with Kettler. Applicant submits that a person of ordinary skill in the art at the time of the invention would not have a reason or motivation to combine the teachings of Asaba with Kettler to yield the claimed invention. In particular, Asaba does not disclose or suggest the desirability of formulating bi-directional color matches. Instead, Asaba is only interested in establishing a database of gonio-spectral reflectance factors that a personal computer uses to form three-dimensional graphic images and not formulate bi-directional color matches. Asaba does not contemplate or provide a hint or

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motivation that suggests the desirability of having its methodology used to formulate bi-directional color matches. Moreover, Kettler does not provide any reasons or motivations why one of ordinary skill in the art would look to a reference like Asaba, which is interested in forming three-dimensional graphic images, to apply optical parameters to a single particle scattering algorithm to use in an approach that is interested in formulating bi-directional color matches. Without a specific hint or motivation provided in either Asaba or Kettler, Applicant submits that a person of ordinary skill in the art would not have a reason to combine the teachings of Asaba with Kettler. As a result, Applicant submits that the §103(a) rejection under the combination of Kettler in view of Asaba is improper.

Accordingly, Applicant requests that the Examiner not make a §103(a) rejection of amended claims 1, 8, 13, 17, 18, 26, 31, 33, 40, 44, 47 and depending claims 4, 9-12, 14-16, 22, 27-30, 32, 36, 41-43, 45-46 and 48-78 under the combination of Kettler in view of Asaba.

In view of the foregoing remarks and amendments, Applicant requests that the Examiner reconsider this application and allow claims 1, 4-18, 22-33 and 36-78.

If the Examiner has any questions regarding the present patent application, the Examiner can call Applicant's attorney, David Goldman, at telephone number (518)-387-5927 or (518)-387-5903.

Respectfully submitted,



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